

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

NICOLE LEEDY (13)

Case No. 3:15-CR -00307-M

**GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION
TO CORRECT CLERICAL ERROR PURSUANT TO
FEDERAL RULE CRIMINAL PROCEDURE RULE 36**

Nicole Leedy argues that she did not receive credit for all the time that she served in custody from her initial arrest in 2015 until her sentencing hearing on July 15, 2016.

(dkt 841, pg 1) In particular, she states that “because the case number 2008-CR-11402 was not listed on the judgment they (the Bureau of Prisons) can not credit defendant for that time.” She claims that she “remembers clearly the oral pronouncement at sentencing was to include time spent in custody to run concurrent with the above listed case.” (dkt 841, pg 1)

I. Factual Background

On July 8, 2015, an indictment was filed charging Leedy and others with a drug conspiracy for conduct which occurred from on or about January 2014 until the date of the indictment. (dkt 1) On March 8, 2016, Leedy pled guilty to Count One of the indictment. On July 15, 2016, Leedy was sentenced to 188 months imprisonment, three years supervised release, and a \$100 Mandatory Special Assessment on Count One of the indictment. On August 12, 2016, the judgment was filed reflecting that the sentence. (dkt 523) The Judge also included in the judgment that Leedy’s sentence was to run

concurrently with her related undischarged terms of imprisonment in case numbers 2015-CR-8834 and 2015-CR-8835. (dkt 523, pg 2)

II. Argument

Federal Rule 36 states: “After giving any notice it considers appropriate, the court may at any time correct a clerical error in a judgment, order, or other part of the record, or correct an error in the record arising from oversight or omission.”

The government submits there is no error to correct because there was no error arising from oversight or omission. The Judge specifically included in the judgment that Leedy’s sentence was to run concurrently with her *related* undischarged terms of imprisonment in case numbers 2015-CR-8834 and 2015-CR-8835. [emphasis added]. The case (2008-CR-11402) which Leedy seeks to add to the judgment is an **unrelated** case which occurred in 2008, which occurred years before the conduct alleged in her federal case. (dkt 382, ¶38) Leedy was sentenced to 15 years in prison in 2009 for that case and was paroled on November 8, 2012. The sentence is set to expire in 2023. (dkt 382, ¶38) Thus, she was on parole for that offense when she committed the instant federal offense. This is document well documented in the PSR (dkt 382, ¶ 42)

Also, United States Sentencing Guidelines section 5G1.3(a) states, “If the instant offense was committed while the defendant was serving a term of imprisonment (including work release, furlough, or escape status) or after sentencing for, but before commencing service of, such term of imprisonment, the sentence for the instant offense shall be imposed to *run consecutively* to the undischarged term of imprisonment.” [emphasis added]

Since case number 2008-CR-11402 is unrelated and the defendant was on parole for that offense when she committed the instant offense, the government is opposed to running the unrelated sentence concurrent with her federal case. The Government further submits that there is no evidence that the Judge indicated that case number 2008-CR-11402 should run concurrently with her federal case. Instead, the Judge specifically stated on the record that case numbers 2015-CR-8834 and 2015-CR-8835 were to run concurrently with her federal case as they were related conduct.

III. CONCLUSION

For the reasons stated above, the Government requests that the Court deny the defendant's Motion to Correct Clerical Error.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2020, I electronically filed the foregoing document with the Clerk of Court for the United States District Court, Northern District of Texas, using the electronic case filing system of the Court. I also mailed a paper copy to:

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